

CHAPTER NO. 941

SENATE BILL NO. 1614

By Haun, McNally

Substituted for: House Bill No. 1130

By Westmoreland, Ford, Todd, Kent, Langster

AN ACT To amend Tennessee Code Annotated, Title 55, Chapter 5, Part 1, relative to auto theft.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 5, Part 1, is amended by adding the following new sections:

SECTION ____.

(a) This section shall be known and may be cited as the Motor Vehicle Chop Shop Act of 1999.

SECTION ____ Definitions.

(a) "Chop Shop" means any building, lot, or other premises where one or more persons are, or should have known that they were engaged in altering, destroying, disassembling, dismantling, reassembling, or storing any motor vehicle or motor vehicle component part which was obtained by theft, or any other unlawful means to either:

(1) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate or remove the identity, including the vehicle identification number of such motor vehicle or motor vehicle component part, or to prevent the identification of such motor vehicle or motor vehicle component part; or

(2) Sell or dispose of such motor vehicle or motor vehicle component part.

(b) "Motor Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a highway, which is self-propelled or which may be connected to and towed by a self-propelled device, and shall also include any and all devices which are self-propelled but are not designed for use upon a highway, including, but not limited to, farm machinery, construction equipment, and water craft.

(c) "Motor Vehicle Component Part" includes any and all parts installed upon the "Motor Vehicle", including, but not limited to, engines, transmissions, vehicle bodies, chassis, doors, deck lids, front end clips (fenders and grill), seats, differentials, tires, wheels, steering wheels, air bags, automobile radios, automobile tape players, and bumpers.

(d) "Person" includes a natural person, company, corporation, unincorporated association, partnership, professional corporation, and any other legal entity.

(e) "Unidentifiable" means that the uniqueness of a motor vehicle or motor vehicle component part cannot be established by either expert law enforcement investigative personnel specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle theft examination techniques, or by expert employees of not-for-profit motor vehicle theft prevention agencies, specially trained and experienced in motor vehicle theft investigation procedures and motor vehicle theft examination techniques.

(f) "Vehicle Identification Number" means: (1) a number or numbers, a letter or set of letters, a character or set of characters, a derivative or derivatives, or a combination thereof, used by the manufacturer for the purpose of uniquely identifying a motor vehicle or motor vehicle component part, or (2) any number, set of numbers, a letter or set of letters, a character or set of characters, a derivative or derivatives, or a combination thereof assigned by the Tennessee Department of Safety, or any other state title and registration division in the normal course of their duties in salvage conversion or restoration.

(g) "Tool, Implement, Instrumentality" means any tool or device, either electrical, mechanical or electronic which can be and is being used (1) to alter, destroy, disassemble, dismantle, or reassemble any stolen motor vehicle or motor vehicle component part, to include, but not be limited to, hand tools, power tools, wrenches, air guns, and tool boxes, or (2) to alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate, or remove the vehicle identification number on any motor vehicle or motor vehicle component part, to include, but not be limited to, grinders, die stamps, rivet guns, rivets, drills, torches, and welders, or (3) to sell, dispose, or transport a stolen motor vehicle or stolen motor vehicle component part, to include, but not be limited to, passenger vehicles, towing vehicles (wreckers or rollbacks), shipping containers, cellular telephones and pagers.

SECTION ____ Violations and Penalties.

(a)(1) It is an offense to:

(A) Knowingly own, operate or conduct a chop shop;

(B) Transport any motor vehicle or motor vehicle component part to or from a location, knowing it to be a chop shop;

(C) Purchase or receive any motor vehicle or motor vehicle component part from a location knowing it to be a chop shop; or

(D) Sell or transfer any motor vehicle or motor vehicle component part to a location knowing it to be a chop shop.

(2)(A) A violation of subsection (a)(1)(A) or (a)(1)(B) is a Class D felony. In addition to the authorized term of imprisonment for a

Class D felony, such violation shall also be punished by a minimum mandatory fine of three thousand five hundred dollars (\$3,500).

(B) A violation of subsection (a)(1)(C) shall be punished as theft pursuant to § 39-14-103 and graded pursuant to § 39-14-105 depending upon the value of the motor vehicle or motor vehicle component part purchased or received.

(C) The penalty for a violation of subsection (a)(1)(D) shall be graded pursuant to § 39-14-105 depending upon the value of the motor vehicle or motor vehicle component part sold or transferred.

(b) In addition to any other punishment, a person convicted of a violation of this section shall be ordered to make restitution to the lawful owner or owners of the stolen motor vehicle or motor vehicle component part, or to the owner's insurer, and to any other person for financial loss sustained as a result of a violation of this section.

(c) Financial loss shall include, but not be limited to, loss of earnings, out-of-pocket and other expenses, repair and replacement costs and claims payments. "Lawful owner" shall include an innocent bona fide purchaser of a motor vehicle or motor vehicle component part who does not know the motor vehicle or motor vehicle component part to be stolen.

(d) The court shall determine the extent and method of restitution.

SECTION _____. Seizure of property.

(a) Any motor vehicle or motor vehicle component part with identification numbers or distinguishing numbers or marks which have been altered, counterfeited, defaced, destroyed, disguised, falsified, forged, obliterated, or removed shall be seized, forfeited, and disposed of in accordance with Tennessee Code Annotated, § 55-5-108.

(b) Any tool, implement, or instrumentality used in altering, destroying, disassembling, dismantling, or reassembling of a stolen motor vehicle or stolen motor vehicle component part or (2) any tool, implement or instrumentality used to alter, counterfeit, deface, destroy, forge, obliterate, or remove the motor vehicle identification number, or (3) any tool, implement, or instrumentality used in the transportation, disposal, or sale of stolen motor vehicles or stolen motor vehicle component parts is hereby declared to be contraband and may be seized by a member of a state or local law enforcement agency and subject to forfeiture in accordance with this act.

(c) When property is seized pursuant to this section, the seizing agency shall remove the property to a place designated by that department for safe storage pending disposition.

(d) No civil liability shall be attached to any law enforcement officer acting in good faith in regard to the seizure and forfeiture of motor

vehicles, motor vehicle component parts, tools, implements, or instrumentalities pursuant to this statute.

(e) For purposes of clarifying the provisions of this subsection and consistent with the overall remedial purpose of asset forfeitures, property is subject to seizure and forfeiture upon the arrest of a person who owns, operates or conducts a chop shop, or transports any motor vehicle or motor vehicle component part to or from a chop shop, or sells, transfers, purchases or receives any motor vehicle or motor vehicle component part to or from a chop shop.

SECTION ____ Forfeiture of property.

(a)(1) If the state meets its burden of proof, any tool, implement, or instrumentality used in altering, destroying, disassembling, dismantling, or reassembling of stolen motor vehicle or stolen motor vehicle component parts, or (2) any tool, implement, or instrumentality used to alter, counterfeit, deface, destroy, forge, obliterate, or remove the motor vehicle identification number, or (3) any tool, implement, or instrumentality used in the transportation, disposal, or sale of stolen motor vehicles or stolen motor vehicle component parts, shall be forfeited in accordance with this act.

(b) The district attorney in the county in which the seizure occurs shall bring an action for forfeiture in either chancery or circuit court. The forfeiture action shall be brought within sixty (60) days from the date of seizure.

(c) The clerk of the court shall give notice of the forfeiture proceedings by certified mailing a copy of the complaint in the forfeiture proceedings and instructions on how the action for forfeiture may be contested to each person whose right, title, or interest is of record.

(d) Notice of the proceedings shall be given to any such other person as may appear from the facts and circumstances to have any right, title or interest in or to the property.

(e) The owner of the property, or any person claiming an ownership or security interest, may within fourteen (14) days after the certified mailing of such notice, file a verified answer to the complaint and may appear at the hearing on the action for forfeiture.

(f) The district attorney shall prove by a preponderance of the evidence that such property was used in the commission of a violation of this statute, or was possessed to facilitate such violation.

(g) Failure to carry the burden of proof shall operate as a bar to any forfeiture, and the property shall be immediately returned to the person in possession.

(h) If the state meets its burden of proof, the court may order:

(1) That the property be destroyed by the agency that seized it or by some other agency designated by the court; or

(2) That the property be retained for use by the seizing agency in furtherance of vehicle theft investigations; or

(3) That the property be sold and the proceeds are to be used by the seizing agency for vehicle theft investigations only.

(i) Notwithstanding subsection (h) of this section, if property is forfeited pursuant to this section and a person claiming a security interest has filed an answer to subsection (e), such property shall be forfeited to the secured party's interest.

(j) If the property was seized as a result of a joint operation between two or more agencies, the proceeds will be divided between all agencies.

SECTION _____. Civil liability, relief available, triple damages.

(a) Any district attorney, insurer, or other aggrieved person may institute civil proceedings against any person in court of competent jurisdiction seeking relief from conduct constituting violation of this act, § 55-5-111, or § 55-5-112, or if the plaintiff in such proceedings proves the alleged violation by a preponderance of the evidence, the court, after due provision for the rights of innocent persons may grant relief by entering the appropriate order or judgment, to include, but not be limited to, threefold the actual damages sustained by the person.

(b) Obtaining civil remedy under this section shall not preclude obtaining any other civil or criminal remedy under either this act or any other provision of law. Civil remedies under this section are supplemental and not mutually exclusive.

(c) Any civil remedies under this section are separate to any restitution ordered by the court in the criminal proceedings.

SECTION 2. Tennessee Code Annotated, § 55-5-112(b), is amended by deleting the subsection in its entirety and substituting instead the following:

This section shall not prohibit the restoration of a vehicle identification number upon a motor vehicle or motor vehicle component part by the Commissioner of Safety or his designee, nor prevent any manufacturer from placing in the ordinary course of business numbers or marks upon motor vehicles or motor vehicle component parts thereof.

SECTION 3. Tennessee Code Annotated, § 55-5-111, is amended by deleting the words "Class C Misdemeanor" and substituting the words "Class A Misdemeanor".

SECTION 4. Tennessee Code Annotated, § 55-5-110, is amended by deleting subsections (b)(1) and (b)(2) in their entirety.

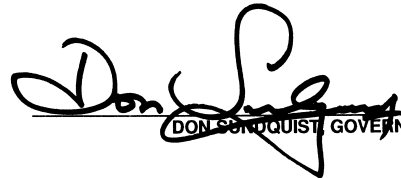
SECTION 5. This act shall take effect July 1, 2000, the public welfare requiring it.

PASSED: June 8, 2000


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 21st day of June 2000


DON SUNDQUIST, GOVERNOR